

**Letter of Findings Number: 04-20150585; 04-20150621**  
**Sales Tax**  
**For Tax Years 2012-2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Restaurant did not meet its burden to prove the Department's assessment incorrect for sales tax on the rental of banquet facilities.

### ISSUES

#### **I. Sales Tax - Liability.**

**Authority:** IC § 6-2.5-2-1; IC § 6-8.1-5-1; IC § 6-2.5-1-2; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); [45 IAC 2.2-4-8](#).

Taxpayer protests the imposition of sales for banquet facilities rental.

#### **II. Tax Administration - Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten-percent negligence penalty.

### STATEMENT OF FACTS

Taxpayer is a restaurant business operating in Indiana. Two locations were audited by the Indiana Department of Revenue ("Department"). The Department issued proposed assessments for sales tax not charged to customers on certain items and for use tax on items purchased in which sales tax was not paid at the time of purchase. In its original protest letter, Taxpayer protested all assessments. An administrative hearing was held, and during the hearing Taxpayer conceded the sales tax on several protested items: bartered items issue, use tax assessed on purchases, and use tax assessed on capital assets. Therefore, this Letter of Findings results only addresses the remaining protested issue, the imposition of sales tax on the rental of banquet facilities. Additional facts will be supplied as necessary.

#### **I. Sales Tax - Liability.**

### DISCUSSION

Taxpayer protests the Department's proposed assessment of sales tax on the rental of banquet facilities. All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue before the Department is whether Taxpayer met their burden to prove the Department's assessment is incorrect.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Additionally, the purchaser "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." Id.

In addition [45 IAC 2.2-4-8](#) provides:

- (a) For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation including booths, display spaces and banquet facilities, in any place where accommodations are regularly furnished for a consideration is a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income from retail unitary transactions.
- (b) In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax.
- (c) There is no exemption for purchases made by persons who are engaged in renting or furnishing accommodations. Such persons are deemed to purchase or otherwise acquire tangible personal property for use or consumption in the regular course of their business.
- (d) The renting or furnishing of an accommodation for less than thirty (30) days constitutes a retail merchant making a retail transaction. Every person so engaged must collect the gross retail tax on the gross receipts from such transactions. The tax is borne by the person or organization who uses the accommodation.

Taxpayer did not provide any documentation or refer to any law that showed the Department's assessment incorrect. Therefore, Taxpayer should have collected sales tax on its rental of banquet facilities to customers. Taxpayer did not provide enough information to meet its burden under IC § 6-8.1-5-1(c). Taxpayer's protest of the proposed assessment of additional sales tax on the rental of banquet facilities is denied.

### **FINDING**

Taxpayer's protest is respectfully denied.

## **II. Tax Administration - Negligence Penalty.**

Taxpayer requests that the Department abate the ten-percent negligence penalty. IC § 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to be determined on a case by case basis according to the facts and circumstances of each taxpayer. *Id.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . ."

Taxpayer has demonstrated reasonable cause. This is Taxpayer's first audit for both locations. However, as a result of this audit and protest process, Taxpayer is now on notice of its tax duties and penalty may be imposed on any future liabilities.

### **FINDING**

Taxpayer's protest is sustained.

### **CONCLUSION**

Taxpayer's protest to the imposition of sales tax is denied but negligence penalty is sustained.

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